

RESOLUTION NO. 2005-237

A RESOLUTION OF THE LODI CITY COUNCIL
ESTABLISHING PROCEDURES FOR THE CONSIDERATION
OF PRE-ANNEXATION AND DEVELOPMENT AGREEMENTS

Development Agreements

WHEREAS, the State Legislature, pursuant to Government Code Section 65864 *et seq.*, has authorized the City to enter into development agreements which provide greater certainty to developers to proceed with approved projects according to local policies and regulations; and

WHEREAS, Government Code Section 65867 requires a public hearing before the planning agency and the legislative body prior to the adoption of a development agreement; and

Pre-Annexation Agreements

WHEREAS, Government Code Section 65865(b) authorizes cities to enter into pre-annexation and annexation agreements with those having a legal or equitable interest in real property within a city's sphere of influence.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI HEREBY RESOLVES, DETERMINES, FINDS, AND ORDERS AS FOLLOWS:

Section One. As a policy, development agreements and/or pre-annexation/annexation agreements should include public benefit(s), beyond those already forthcoming through project approvals and normal impact fees and conditions, in return for commitments to maintain present plans and regulations for determinate periods.

Section Two. The following procedures are approved:

A. Application.

1. Consideration of a development agreement, including pre-annexation/annexation agreement, (Article 2.5, Chapter 4, Title 7 of the Government Code, beginning with Section 65864) shall be initiated by the property owner ("Applicant") filing an application for such consideration with the Community Development Director. The Applicant shall have at the time the application is made a legal or equitable interest in the property. The application shall include:

- (a) A proposed agreement, which conforms to the form approved by the City Attorney and shall include the following:
 - (i) A legal description of the property sought to be covered by the agreement.
 - (ii) A description of the proposed uses, maximum height and size of proposed buildings, density or intensity of use, and provision for reservation or dedication of land for public purposes.
 - (iii) Conditions, terms, restrictions, and requirements for subsequent City discretionary actions.

- (iv) Proposed time when construction would be commenced and completed, including a phasing plan.
 - (v) Proposed public benefits inclusive of an implementation phasing plan.
 - (vi) Termination date for the agreement, recommended at ten (10) years but subject to negotiation.
- (b) Sufficient information to enable the Community Development Director to perform an initial study pursuant to Public Resources Code Section 21160.
 - (c) Sufficient information to establish that the project is consistent with the City's General Plan.
 - (d) Such other information as the Community Development Director may require.

2. The application shall be accompanied by a five thousand dollar (\$5,000) deposit fee to cover processing costs including but not limited to staff time, legal fees, and professional fees. Any overage shall be refunded subsequent to adoption of the agreement or upon termination of the application. Processing costs greater than \$5,000 shall be billed in advance by depositing additional funds in an amount that the Community Development Director may require based on estimated cost of remaining processing. A greater deposit may be required by the City Manager in complex matters.

B. Recommendation and Transmittal.

1. The City Attorney shall transmit a letter to the Community Development Director indicating that the proposed agreement is legally sufficient and in accordance with the requirements of this Resolution.

2. The Community Development Director, shall, in accordance with adopted City procedures for implementation of California Environmental Quality Act, "CEQA," prepare appropriate environmental documentation and, upon completion of such documentation, shall transmit the application, together with the Community Development Director's report, detailing the:

- (a) Adequacy of existing plans and regulations;
- (b) Consistency with General Plan and any applicable specific plan;
- (c) Analyzing the proposed public benefit(s) as a balance for development commitments; and
- (d) Indicating why such benefit(s) should/should not be adequate to the Planning Agency.

C. Planning Commission Action.

1. Upon receipt of the application, environmental documentation, completion of the Community Development Director's report, receipt of the City Attorney's letter, and an executed copy of the Agreement by the Applicant, the Community Development Director shall schedule a public hearing on the application before the Planning Commission. The hearing

shall be preceded by public notice given pursuant to Government Code Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the application.

2. Following the public hearing, the Planning Commission may recommend approval, disapproval, or approval as modified by the Planning Commission of the application and transmit the same on to the City Council for consideration.

D. City Council Action.

1. Upon receipt of the application, environmental documentation, Community Development Director's Report, City Attorney's letter, and Planning Commission recommendation, the City Clerk shall schedule a public hearing on the application. The hearing shall be preceded by public notice given pursuant to Government Code Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the application.

2. The City Council may consolidate the public hearing by the Planning Commission with the City Council public hearing.

3. Following the public hearing, the City Council may approve, disapprove, or approve as modified by the City Council the application and, if approved or approved as modified, adopt an ordinance approving the agreement. Said agreement shall not become effective prior to its execution by the Mayor or any other limitations set out in the agreement or its adopting Ordinance.

4. Within ten (10) days after the City executes a development agreement, the City Clerk shall cause a copy thereof to be recorded with the County Clerk/County Recorder of the County of San Joaquin.

E. Annual Review.

1. All development projects subject to the agreement shall be reviewed by the Community Development Director once every twelve (12) months concurrent with the applicant's (hereinafter referred to as "PROPERTY OWNER" for purposes of describing the non-City parties to the agreement) submittal of an Annual Monitoring Report.

2. The purpose of the review shall be to inquire into the good faith compliance of the PROPERTY OWNER with the terms of the agreement and any other matters which may be specified in said agreement.

3. Prior to each review, the PROPERTY OWNER shall file a report with the Community Development Director as to development which has occurred under the agreement subsequent to the last past review and any other matters which the PROPERTY OWNER wishes to bring to the Community Development Director's attention.

4. The Community Development Director shall prepare an annual review report and set the matter for public hearing by the Planning Commission for recommendation to the City Council. The City Council shall hold a public hearing on the annual review report and consider said report and recommendations by the Planning Commission and approve, modify or terminate.

5. The PROPERTY OWNER or any successor to PROPERTY OWNER shall reimburse the City for all costs of the annual review process apportionable to that agreement and shall pay a deposit of \$1,000.

F. Termination, Cancellation, Modification, and Amendment of Development Agreements.

1. Any development agreement may be amended by mutual consent of the PROPERTY OWNER and the City Council or cancelled by the City Council in the same manner as set forth above for entering into such agreement.

2. If, as a result of a periodic review, the City Council finds and determines, on the basis of substantial evidence, that the PROPERTY OWNER or successor in interest has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify the agreement. Notice of intention to amend or cancel in whole or in part shall be given pursuant to Government Code Section 65867.

3. In the event state or federal law or regulations established after the agreement is approved prevent or preclude compliance with one or more provisions of the agreement, the provisions of the agreement shall be modified or suspended as may be necessary to comply with such new law or regulation.

Section Three. The procedures set forth above shall be applicable to pre-annexation and annexation agreements in accordance with Government Code Section 65865(b) and the agreement shall not become operative unless the property subject to the agreement is successfully annexed to the City within the time period specified in the agreement or any extension thereof. In the event the annexation is not completed within the time specified in the agreement, or any extension thereof, the agreement shall become null and void.

Dated: November 2, 2005

=====

I hereby certify that Resolution No. 2005-237 was passed and adopted by the Lodi City Council in a regular meeting held November 2, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


SUSAN J. BLACKSTON
City Clerk